

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	New Fellowship Ministries)	
	District 9, Map 32J, Group B, Control Map 32O,)	
	Parcel 10.04, Special Interest 000)	Hawkins County
	<i>Claim of Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-212(b)(2) from the denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization ("State Board") on September 23, 2005. By letter dated April 10, 2006, State Board staff attorney Emily Bennett notified the applicant of the denial on the ground that "[v]acant and unused property does not qualify for exemption." New Fellowship Ministries, Inc. ("NFM"), the applicant and owner of the property in question, appealed this initial determination to the State Board on May 10, 2006. The undersigned administrative judge conducted a hearing of this matter on September 19, 2006 in Greeneville. NFM was represented by its treasurer, Ron McNutt, and pastor, Dr. Rocky Churchwell. Hawkins County Assessor of Property Don Cinnamon appeared on his own behalf.

Findings of Fact and Conclusions of Law

NFM, an affiliate of the Tennessee Baptist Convention, was incorporated in this state on November 16, 2004. Since its inception, NFM has conducted regular worship services and Sunday school in a rented Christian school building in Kingsport. But many of NFM's approximately 170 members live in the Church Hill area, some 10-12 miles away. On July 14, 2005, with the intention of relocating, NFM purchased a 5.78-acre tract on Old Stage Road in Church Hill. The corporation paid \$150,000 for the property.¹

When NFM applied for exemption of this land, it was vacant and not in use. In a handwritten communication received by the State Board on February 22, 2006, Mr. McNutt indicated that NFM had not yet commenced construction of the planned church building. By the date of the hearing, though, this project was well under way. Indeed, volunteers had just begun work on the interior of the structure; and NFM hopes to have it completed by the end of the year.

Meanwhile, according to Mr. McNutt, NFM has used the subject land at least two nights a week for youth and prayer group meetings as well as Bible studies. Some of these activities

¹This property is currently appraised for tax purposes at \$66,100.

were held under the tents which have been installed on the premises. In addition, NFM has staged a special four-night Easter program on the grounds that was open to the public.

Under authority of Article II, section 28 of the Tennessee Constitution, the General Assembly has enacted legislation stating that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific or nonprofit educational institution which is **occupied and used** by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists...; provided...that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually used** purely and exclusively for religious, charitable, scientific or educational purposes. [Emphasis added.]

Tenn. Code Ann. section 67-5-212(a)(1)(A).

State Board Rule 0600-8-.02(2), effective July 14, 2004, provides (in relevant part) that:

Land will be presumed to be in use if:

- (a) it is land underlying exempt structures or paving; (or)
- (b) the total land area claimed for exemption, including that which is underlying exempt structures, is **five acres or less**. [Emphasis added.]

This presumption is rebuttable by either the applicant for exemption or the property assessor of the affected county. State Board Rule 0600-8-.02(3). In any event, "[I]and held **solely** for future construction or other future uses does not qualify for exemption." [Emphasis added.] State Board Rule 0600-8-.02(5).

In this state, contrary to most other jurisdictions, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., Christian Home for the Aged, Inc. v. Assessment Appeals Commission, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). Nevertheless, as the party appealing from the initial determination on its application for exemption, NFM has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

NFM undoubtedly qualifies as a religious institution under Tenn. Code Ann. section 67-5-212. Yet, based on the factual situation at the time, the staff attorney's ruling on the application was clearly correct. Arguably, an applicant for exemption should not be allowed to submit new or additional information in an appeal from an initial determination.² For better or worse, however, the Assessment Appeals Commission (appointed by the State Board pursuant to Tenn. Code Ann. section 67-5-1502) has followed the more lenient policy that "until an application is finally determined, the Board...should consider all pertinent evidence relative to

²Under this view, in the event of any material change of circumstances following the State Board's initial determination, the owning institution would be required to submit a new application for exemption.

the application at hand.” Beth Sholom East Memphis Synagogue, Inc. (Shelby County, Final Decision and Order, May 16, 2001), p. 3.

For the most part, claims of exemption of land on which construction of a new church building is in progress have not been very successful.³ In Brainerd Baptist Church (Hamilton County, Initial Decision and Order, October 21, 2005), for example, it was held that activities such as “an occasional prayer service or other gathering” on the construction site “do not rise to the level of actual occupancy and use of land for religious purposes.” *Id.* at p. 3. See also Heritage Fellowship, Inc. (Jefferson County, Initial Decision and Order, July 15, 2005).

Ordinarily, the assertion that a church regularly uses land which does not even lie in the same city as its present house of worship would invite skepticism – especially where, as here, the institution itself is less than two years old. But as Dr. Churchwell pointed out, NFM’s right to use the campus of the Christian school in Kingsport for outdoor activities is limited. Further, for whatever reason, NFM has apparently drawn more of a following in the Church Hill community. These factors lend credence to Mr. McNutt’s testimony concerning the extent of the church’s usage of the subject property during the period of construction. Given the aforementioned “liberal construction” rule, the administrative judge concludes that NFM is entitled to exemption of the maximum acreage covered by the rebuttable presumption established under State Board Rule 0600-8-.02(5). This exemption will take effect on May 10, 2006, when NFM formally notified the State Board (in an attachment to the appeal form) of the exempt uses of the subject property. See Tenn. Code Ann. section 67-5-212(b)(3).

Order

It is, therefore, ORDERED that five (5.00) acres of land on the subject parcel shall be exempt from taxation, effective May 10, 2006. The remainder of the acreage shall be assessable.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the

³Subject to certain conditions, Tenn. Code Ann. section 67-5-212(g) provides for exemption of **improvements** under construction on land acquired by an exempt institution. But the exemption afforded by that subsection has not been construed to extend to the underlying **land**. See, e.g., Central Church, Inc. (Shelby County, Final Decision and Order, June 25, 2003).

appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 13th day of October, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Ron McNutt, Treasurer, New Fellowship Ministries
Don Cinnamon, Hawkins County Assessor of Property

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